

806 KAR 14:110. Dividend plans; filing, participation.

RELATES TO: KRS 304.24-310, 304.24-320, 304.24-330, 304.24-250, 304.13-010-304.13-390, 304.14-120, 304.12-010, 304.12-080-304.12-110

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation permits the participation by insureds in dividend premiums under "participating" policies and requires a filing of such dividend plans with the executive director.

Section 1. It having been demonstrated that improved safety measures and improved claims handling may result in savings in expenses and in losses over and above those levels anticipated, and it having also been demonstrated that it is possible, in certain cases, for an insurer to identify and group the policyholders contributing to such savings into specific classifications; to further encourage such savings in the net cost of insurance protection, insurers authorized to transact such insurance in this state may, after complying with the following conditions, issue policies entitled to participate from time to time in the earnings of the insurer through dividends. This administrative regulation shall not apply to dividends to shareholders in stock companies nor to general dividends to policyholders in mutual companies.

Section 2. Such insurer shall file or refile with the executive director, in substantially the same manner as a rate filing, every proposed dividend plan and every modification thereof, including discontinuance, which it proposes to use, accompanied by the information upon which the insurer supports such filing.

(1) No such filing shall propose in this state both participating and nonparticipating policies for the same class of risk. Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. In determining the proposed eligibility requirements for a dividend plan, the underlying standard shall be the demonstrated or demonstrable success in savings in expenses or in losses over and above levels anticipated in previously filed rates. Any proposed dividend plan must be made available to all insureds meeting the eligibility requirements set forth in the dividend plan. To facilitate this and to broaden the availability of such programs, agents licensed by one or more companies of a group of affiliated insurers shall also be licensed by the company within such group authorized to write such insurance policies if the company for which such agent is then licensed does not write such participating policies. Notice and details of the availability of the program in Kentucky shall be given to all of the group's licensed agents.

(2) If such filing is an initial filing or the facts or the laws have changed since a prior filing has been used, the filing shall contain either satisfactory evidence of proper specific charter (as defined in KRS 304.3-050), authority to issue participating policies, or satisfactory evidence that unless otherwise provided by its charter, the laws of its domicile provide that it may issue policies entitled to participate in the earnings of the insurer through dividends.

(3) Such filing shall also contain proposed policy provisions or proposed policy endorsement forms for the payment of dividends which shall further provide that all such dividends must be paid by the insurer directly to the insured, and that no such dividends may be assigned to associations or others, except upon assignment of the policy for value. If the provision for the payment of dividends is made by separate endorsement rather than incorporated in the policy form, such endorsement must be attached to each and every such policy issued.

Section 3. Dividends to such participating policies shall be paid only out of that part of such sur-

plus funds which is derived from any realized net profits from the insurer's business. No such insurer or its agents shall guarantee or promise to a policyholder or prospective policyholder the amount of percentage of dividends to be paid; and no dividend, otherwise earned, shall be made contingent upon payment of renewal premium on any policy, or membership in, or affiliation with, any association. All brochures and advertising material shall affirmatively and clearly set forth that dividends are not guaranteed and that all policyholders are eligible for the dividend program whether or not they are members of, or affiliated with, any association. (I-14.11; 1 Ky.R. 1082; Am. 2 Ky.R. 27; eff. 7-2-75; TAm eff. 8-9-2007.)